

CIVIL COVER SHEET

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)**DEFENDANT(S)**

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

 (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- | | |
|-----------------------------|---|
| 1 U.S. GOVERNMENT PLAINTIFF | 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY) |
| 2 U.S. GOVERNMENT DEFENDANT | 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
 (FOR DIVERSITY CASES ONLY)

- | PLF | DEF | PLF | DEF |
|-----|---|-----|---|
| 1 | 1 CITIZEN OF THIS STATE | 4 | 4 INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE |
| 2 | 2 CITIZEN OF ANOTHER STATE | 5 | 5 INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE |
| 3 | 3 CITIZEN OR SUBJECT OF A FOREIGN COUNTRY | 6 | 6 FOREIGN NATION |

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- | | | | | | | |
|--|----------------------------|---------------------------------|--------------------------|--|---------------------------------------|---|
| 1 ORIGINAL PROCEEDING | 2 REMOVED FROM STATE COURT | 3 REMANDED FROM APPELLATE COURT | 4 REINSTATED OR REOPENED | 5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District) | 6 MULTIDISTRICT LITIGATION - TRANSFER | 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT |
| 8 MULTIDISTRICT LITIGATION - DIRECT FILE | | | | | | |

V. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

(IF COMPLEX, CHECK REASON BELOW)

- | | |
|--|--|
| 1. Unusually large number of parties. | 6. Problems locating or preserving evidence |
| 2. Unusually large number of claims or defenses. | 7. Pending parallel investigations or actions by government. |
| 3. Factual issues are exceptionally complex | 8. Multiple use of experts. |
| 4. Greater than normal volume of evidence. | 9. Need for discovery outside United States boundaries. |
| 5. Extended discovery period is needed. | 10. Existence of highly technical issues and proof. |

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # _____	AMOUNT \$ _____	APPLYING IFP _____	MAG. JUDGE (IFP) _____
JUDGE _____	MAG. JUDGE _____ (Referral)	NATURE OF SUIT _____	CAUSE OF ACTION _____

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)CONTRACT - "0" MONTHS DISCOVERY TRACK

150 RECOVERY OF OVERPAYMENT &
ENFORCEMENT OF JUDGMENT
152 RECOVERY OF DEFAULTED STUDENT
LOANS (Excl. Veterans)
153 RECOVERY OF OVERPAYMENT OF
VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

110 INSURANCE
120 MARINE
130 MILLER ACT
140 NEGOTIABLE INSTRUMENT
151 MEDICARE ACT
160 STOCKHOLDERS' SUITS
190 OTHER CONTRACT
195 CONTRACT PRODUCT LIABILITY
196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

210 LAND CONDEMNATION
220 FORECLOSURE
230 RENT LEASE & EJECTMENT
240 TORTS TO LAND
245 TORT PRODUCT LIABILITY
290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

310 AIRPLANE
315 AIRPLANE PRODUCT LIABILITY
320 ASSAULT, LIBEL & SLANDER
330 FEDERAL EMPLOYERS' LIABILITY
340 MARINE
345 MARINE PRODUCT LIABILITY
350 MOTOR VEHICLE
355 MOTOR VEHICLE PRODUCT LIABILITY
360 OTHER PERSONAL INJURY
362 PERSONAL INJURY - MEDICAL
MALPRACTICE
365 PERSONAL INJURY - PRODUCT LIABILITY
367 PERSONAL INJURY - HEALTH CARE/
PHARMACEUTICAL PRODUCT LIABILITY
368 ASBESTOS PERSONAL INJURY PRODUCT
LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

370 OTHER FRAUD
371 TRUTH IN LENDING
380 OTHER PERSONAL PROPERTY DAMAGE
385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

422 APPEAL 28 USC 158
423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

440 OTHER CIVIL RIGHTS
441 VOTING
442 EMPLOYMENT
443 HOUSING/ ACCOMMODATIONS
445 AMERICANS with DISABILITIES - Employment
446 AMERICANS with DISABILITIES - Other
448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

462 NATURALIZATION APPLICATION
465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

463 HABEAS CORPUS- Alien Detainee
510 MOTIONS TO VACATE SENTENCE
530 HABEAS CORPUS
535 HABEAS CORPUS DEATH PENALTY
540 MANDAMUS & OTHER
550 CIVIL RIGHTS - Filed Pro se
555 PRISON CONDITION(S) - Filed Pro se
560 CIVIL DETAINEE: CONDITIONS OF
CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

550 CIVIL RIGHTS - Filed by Counsel
555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

625 DRUG RELATED SEIZURE OF PROPERTY
21 USC 881
690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

710 FAIR LABOR STANDARDS ACT
720 LABOR/MGMT. RELATIONS
740 RAILWAY LABOR ACT
751 FAMILY and MEDICAL LEAVE ACT
790 OTHER LABOR LITIGATION
791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

820 COPYRIGHTS
840 TRADEMARK
880 DEFEND TRADE SECRETS ACT OF 2016 (DTSA)

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

830 PATENT
835 PATENT-ABBREVIATED NEW DRUG
APPLICATIONS (ANDA) - a/k/a
Hatch-Waxman cases

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

861 HIA (1395ff)
862 BLACK LUNG (923)
863 DIWC (405(g))
863 DIWW (405(g))
864 SSID TITLE XVI
865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

870 TAXES (U.S. Plaintiff or Defendant)
871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

375 FALSE CLAIMS ACT
376 Qui Tam 31 USC 3729(a)
400 STATE REAPPORTIONMENT
430 BANKS AND BANKING
450 COMMERCE/ICC RATES/ETC.
460 DEPORTATION
470 RACKETEER INFLUENCED AND CORRUPT
ORGANIZATIONS
480 CONSUMER CREDIT
485 TELEPHONE CONSUMER PROTECTION ACT
490 CABLE/SATELLITE TV
890 OTHER STATUTORY ACTIONS
891 AGRICULTURAL ACTS
893 ENVIRONMENTAL MATTERS
895 FREEDOM OF INFORMATION ACT 899
899 ADMINISTRATIVE PROCEDURES ACT /
REVIEW OR APPEAL OF AGENCY DECISION
950 CONSTITUTIONALITY OF STATE STATUTES

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

410 ANTITRUST
850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

896 ARBITRATION
(Confirm / Vacate / Order / Modify)

*** PLEASE NOTE DISCOVERY
TRACK FOR EACH CASE
TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ _____

JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE _____ DOCKET NO. _____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. _____, WHICH WAS
DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

/s/ Kim M. Jackson

08/15/2023

SIGNATURE OF ATTORNEY OF RECORD

DATE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BALFOUR BEATTY CONSTRUCTION
LLC.,

Plaintiff,

v.

ASPEN SPECIALTY INSURANCE
COMPANY,

Defendant.

CIVIL ACTION NO.

NOTICE OF REMOVAL

Defendant Aspen Specialty Insurance Company (“Aspen”), pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1447, hereby notices its removal of this action from the Superior Court of Fulton County, State of Georgia, Case No. 2023CV380018, to the United States District Court for the Northern District of Georgia, Atlanta Division, and respectfully shows the Court the following:

1. On October 8, 2020, a civil action was commenced in the Superior Court of Fulton County, State of Georgia with the filing of a complaint, captioned, *Salus 33 Peachtree Place, LLC, successor by merger to 33 Peachtree Holdings, LP, v. Balfour Beatty Construction LLC and HICO Concrete, Inc*, Case No

2020CV341255 (the “Underlying Complaint”). The Underlying Complaint was litigated to trial and a jury verdict was rendered on behalf of plaintiff Salus in the amount of \$5.5 million¹.

2. On May 11, 2023, a declaratory action was commenced in the Superior Court of Fulton County, State of Georgia, with the filing of a complaint, captioned, *Balfour Beatty Construction LLC v. Aspen Specialty Insurance Company*, Case No. 2023CV380018 (the “Balfour DJ”).

3. A copy of the Balfour DJ is attached hereto as Exhibit B.

4. This Notice of Removal is timely because it is being filed not more than 30 days since Aspen’s receipt² of Plaintiff’s Complaint, as required by 28 U.S.C. § 1446(b). Aspen acknowledge service of Plaintiff’s complaint on July 16, 2023.

The Minimum Jurisdictional Amount in Controversy is Satisfied

5. This Court has original jurisdiction over this case under 28 U.S.C. § 1332 because this is a civil action where the matter in controversy exceeds \$75,000.00, exclusive of interest and costs, and is entirely between citizens of different states.

¹ See Exhibit A: Judgment.

² See generally, *Murphy Bros. v. Michetti Pipe Stringing*, 526 U.S. 344 (1999)(Under 28 USCS 1446(b), defendant's time to remove case held triggered by service of summons and complaint--or receipt of complaint after and apart from service of summons--and not by receipt of complaint without any formal service).

6. The Balfour DJ seeks coverage from Aspen for the judgment awarded in the Underlying Complaint in the amount of \$5.5 Million in addition to attorneys' fees. Accordingly, Plaintiff seeks more than \$75,000, and the amount in controversy exceeds the minimum jurisdictional amount.

7. For removal purposes, venue is proper in this court pursuant to 2828 U.S.C. § 1441(a) and Local Rule 3.1 because the United States District Court for the Northern District of Georgia, Atlanta Division, is the federal judicial district and division embracing the Superior Court of Fulton County, Georgia, where Plaintiff filed the Balfour DJ action.

Complete Diversity Exists between the Parties to this Action.

8. Balfour Beatty Construction, LLC is a single-member limited liability company formed in Delaware with a headquarters and principal place of business in Dallas, Texas. Balfour Beatty Construction Group, Inc. is the single member company of Balfour Beatty Construction, LLC and is incorporated in Delaware, but does not have any employees or active business operations outside that of Balfour Beatty Construction, LLC. Plaintiff Balfour is a citizen of Delaware and Texas.

9. Defendant Aspen is a citizen of North Dakota and Connecticut.

10. There is complete diversity of citizenship among the parties pursuant to 28 U.S.C. § 1332(a)(1).

11. Thus, pursuant to 28 U.S.C. § 1332(a), this Court has original jurisdiction over this matter as the amount in controversy meets the federal jurisdictional minimum and there is complete diversity of citizenship between Plaintiff and Defendant.

12. Pursuant to 28 U.S.C. §§ 1441 and 1446, removal of the Balfour DJ to this Court is appropriate.

13. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Clerk of the Superior Court of Fulton County, Georgia, where the Balfour DJ is pending, and will be provided to Plaintiff via written notice.

14. Defendants have paid all fees required by law in connection with this Notice of Removal.

15. All other requirements for removal and for federal court jurisdiction are satisfied.

16. Aspen does not waive any defenses by filing this Notice of Removal and expressly reserves any and all defenses and the right to assert such defenses.

WHEREFORE, Aspen Insurance Company, prays that the above-described Balfour DJ now pending in the Superior Court of Fulton County, Georgia be

removed to this Court as provided by law, that all further proceedings in the Balfour DJ action be stayed and that Defendants receive all relief to which it is entitled.

Respectfully submitted, this 15th day of August, 2023.

Bovis, Kyle, Burch & Medlin, LLC

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Suite 500
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kjackson@boviskyle.com
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/s/ Kim M. Jackson
Ga. State Bar No. 387420

/s/ D. Garrett Anderson
Ga. State Bar No. 432444

*Counsel for Defendant Aspen Specialty
Insurance Company*

CERTIFICATE OF SERVICE

This is to certify that, on this day, the foregoing *Notice of Removal* was served upon counsel of record for the Plaintiff, by depositing a copy in the U.S. Mail in an envelope with adequate postage affixed, addressed as follows:

Shattuck Ely
Ethan Knott
Fellows LaBriola, LLP
Harris Tower, Suite 2400
233 Peachtree Street, N.E.
Atlanta, Georgia 30303

That *Notice of Removal* will also this day be sent to Plaintiff's attorney via e-mail addressed to tely@fellab.com and eknott@fellab.com.

This 15th day of August, 2023.

BOVIS, KYLE, BURCH & MEDLIN, LLC
200 Ashford Center North, Suite 500
Atlanta, Georgia 30338
Tel: (770) 391-9100
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/s/ D. Garrett Anderson
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Attorney for Defendant
Aspen Specialty Insurance
Company